



State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
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Anthony Barrile  
Chief Operating Officer  
Roads Construction, Inc.  
241 Treble Cove Road  
North Billerica, MA 01862

Carol A. Murray  
Acting Commissioner  
NH Department of Transportation  
1 Hazen Drive  
Concord, NH 03302-0483

RE: Hillsborough By-Pass

ADMINISTRATIVE ORDER  
No. WD 01-22

June 7, 2001

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to Roads Construction, Inc., pursuant to RSA 485-A:22 and RSA 482-A:6.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, NH.
2. Roads Construction, Inc. ("Roads") is a Massachusetts corporation having a mailing address of 241 Treble Cove Road, North Billerica, MA 01862.
3. The Department of Transportation ("NHDOT") is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 1 Hazen Drive, Concord, NH.

**C. STATEMENT OF FACTS AND LAW**

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.
2. RSA 482-A authorizes DES to regulate dredging, filling, and construction in and adjacent to surface waters of the state, shorelines of surface waters, and in wetlands. RSA 482-A:11, I authorizes DES to adopt rules to implement the wetlands law. Pursuant to this authority, DES has adopted NH Admin. Rules Wt 100 *et seq.* to implement this program.
- 3 RSA 482-A 4, III provides that failure, neglect or refusal to comply with RSA 482-A or

rules adopted under that chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.

4. Env-Ws 415.02(y) defines significantly altering terrain to include disturbing more than 100,000 square feet of contiguous area.
5. RSA 485-A:17 requires any person who proposes to significantly alter the terrain to obtain a permit from DES prior to initiating the work.
6. Env-Ws 415.09(i) and (k) require employment of temporary and permanent methods for preventing soil erosion and controlling runoff.
7. Env-Ws 415.09(j) requires construction phasing and sequencing, including methods for limiting the length of time of exposure of unstabilized soils.
8. NHDOT is the Contract Administrator for the construction of the Route 9 By-Pass Project in Hillsborough, New Hampshire.
9. Roads is one of three private companies that have been contracted to construct a portion of the Hillsborough Route 9 By-Pass (Project #10440E), a NHDOT project ("Site #1").
10. Vincent N. DeLuca and Peter Gentile, d/b/a Hillsboro Plaza, are the owners of property located at Route 9, Hillsborough, NH more particularly identified on Town of Hillsborough Tax Map 11F as Lots 20 & 11 ("Site #2").
11. Steven E. Holdner and Julia M. Wayland are the owners of property located at 37 Moore Road, Hillsborough, NH more particularly identified on Town of Hillsborough Tax Map 11J as Lot 53 ("Site #3").
12. In August, 2000, Mr. Gentile, Roads and NHDOT signed a "Disposal Agreement" allowing Roads to use Site #2 as a disposal area for construction spoils from Site #1. One of the stipulations of the agreement was that Roads would be responsible for obtaining a site specific permit prior to disposing of any material at Site #2.
13. In September, 2000, Mr. Holdner, Roads and NHDOT signed a "Disposal Agreement" allowing Roads to use Site #3 as a disposal area for construction spoils from Site #1. One of the stipulations of the agreement was that Roads would be responsible for obtaining a Site Specific permit prior to disposing of any material at Site #3.
14. A review of DES records shows that no permits have been applied for or issued to Roads for any activities on Sites #2 or #3.
15. On December 1, 2000, DES issued a Notice of Past Violations ("NPV") to Roads. The NPV noted two separate instances of water quality violations in Beard's Brook caused by the lack of sufficient erosion and sediment control measures by Roads at Site #1 adjacent to Beard's Brook

16. In December 2000, DES received a complaint from the Town of Hillsborough Conservation Commission stating that Roads had not implemented erosion control measures at Site #2, and sediment from Site #2 had impacted wetlands on Site #2.

17. On December 12, 2000, DES personnel conducted a field inspection of Site #2. Also present during the field inspection were Daniel Geiger, of Oak Hill Environmental Services, Todd Clark, Project Manager for Roads, and Peter Gentile. During the inspection, the following was observed:

- a. Site disturbance had occurred in excess of 100,000 square feet without a site specific permit from DES.
- b. The disturbed area was not stabilized.
- c. Erosion control measures were installed only around the perimeter of the pond on the site (the pond was frozen at the time of inspection).
- d. Sediment appeared to have entered the wetlands on the perimeter of the site and slopes adjacent to the wetland were unstable (wetland was frozen at the time of inspection).

18. All present at the December 12, 2000 on-site meeting agreed that a site-specific application, a wetlands permit application, and a wetlands restoration plan was necessary and would be submitted to DES by Roads. To date no applications or restoration proposals for Site #2 have been submitted to DES for review.

19. On April 10, 2001, DES personnel noted turbidity in Beard's Brook caused by runoff coming from Site #3. Water samples were taken and analyzed for turbidity. Turbidity results were 125 Nephelometric Turbidity Units (NTUs) for a sample collected at a point where runoff from the Property entered Beard's Brook. The background turbidity level in Beard's Brook was 6.9 NTUs.

20. On April 12, 2001, DES personnel met with Mr. Clark and inspected Site #3. During the inspection the following was observed:

- a. Site disturbance had occurred in excess of 100,000 square feet without obtaining a site-specific permit from DES.
- b. The disturbed area was not stabilized.
- c. Erosion control measures were not installed.
- d. There was snow cover on most of the site.

21. On April 13, 2001, DES personnel inspected Site #3 and observed the following:

- a. The fill embankment, approximately 25-30 ft. high at its maximum section, was eroding in numerous places.
- b. Uncontrolled sediment-laden runoff was flowing across the fill embankment and the unstabilized slope of the embankment.
- c. Significant "blow outs" of the slope and deep rutting were occurring due to erosion of the embankment.
- d. Sediment had traveled approximately 300-400+ feet downslope of the embankment.

- e. Material under the top 1-1.5 feet of fill material was frozen.
- f. There was significant turbidity in Beard's Brook caused by runoff coming from the Sites #3. Water samples were taken and analyzed for turbidity. Turbidity results exceeded 700 NTUs for a sample collected at a point where runoff from Site #3 entered Beard's Brook. The background turbidity level in Beard's Brook was 4.27 NTUs.
- g. Fill in wetlands resulting from the runoff from Site #3 was observed on abutting properties owned by Bruce D. and May S. Egner (Map 11F, Lot 52), and David W. Seymour (Map 11F, Lot 432).

22. On April 15, 2001, DES personnel noted turbidity in Beard's Brook caused by runoff coming from Site #3. Water samples were taken and analyzed for turbidity. Turbidity results were 54 NTUs for a sample collected at a point where runoff from Site #3 entered Beard's Brook. The background turbidity level in Beard's Brook was 3.1 NTUs.

23. On April 18, 2001 Administrative Order WD 01-17 ("AO") was issued for violations observed on Site # 3. The AO ordered Roads to:

- 1. Immediately stabilize the eroding embankment on the Property.
- 2. Prepare an erosion and sediment control plan ("Plan") for the site, and submit said Plan to DES for review within 5 days of the AO.
- 3. Implement the Plan at the Property, as approved by DES, in accordance with the approved schedule.
- 4. Submit an application for a Site Specific Permit to DES within 10 days of the AO.

24. On June 2, 2001, at 12:50 p.m., the Town of Hillsborough Conservation Commission notified DES personnel that Shedd Brook and Beard's Brook were running turbid. On June 2, 2001 at approximately 5:30 p.m. DES personnel conducted an inspection of the sites and observed turbidity in Beard's Brook from the confluence of Shedd Brook into and including the North Branch of the Contoocook River. Sediment laden runoff was observed leaving Site #3 through the Egner property, and also from the area adjacent to the eastern bridge abutment on Beard Road (station 282 of the DOT plans).

25. James MacCartney of Trout Unlimited reported to DES that on June 2, 2001 he observed sediment from Site #2 entering Shedd Brook upstream of the confluence of Beard's Brook. The sediment-laden waters were observed flowing from Shedd Brook into Beard's Brook and the North Branch of the Contoocook River. Mr. MacCartney also informed DES that on May 16, 2001, the NH Fish & Game Department released 10,000 salmon fry into Beard's Brook from the stone arch bridge to the confluence of the North Branch of the Contoocook River.

26. On June 3, 2001 at approximately 6:00 p.m., DES personnel again observed turbidity in Beard's Brook. Water samples were taken and analyzed for turbidity. Turbidity results were 75 NTUs for a sample collected at a point where runoff from Site #3 entered Beard's Brook, and turbidity results were 30 NTUs for a sample collected at the point where runoff from Site #1 entered Beard's Brook. The background turbidity level in Beard's Brook was 5.4 NTUs.

27. On June 4, 2001, DES personnel conducted an inspection of Sites #2 and #3 and noted the following:

- a. On Site #2, an area of wetland approximately 80 feet by 3-4 feet was laden with sediment, and silt fence in that area was in need of repair or replacement.

- b. The pond on Site #2 was heavily silted.
- c. Soil deposited on site #3 was not stabilized as required by the AO.

28. Pursuant to RSA 485-A:8, II, Beard's Brook and Shedd Brook are classified as Class B waters.

29. Pursuant to Env-Ws 1703.11(b), turbidity in Class B waters shall not exceed naturally occurring conditions by more than 10 NTUs.

30. RSA 485-A:13 states that it shall be unlawful for any person or persons to discharge or dispose of any sewage or waste to the surface or groundwater of the state without first obtaining a permit from DES.

31. Sediment-laden water constitutes waste as defined under RSA 485-A.

32. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."

#### **D. DETERMINATION OF VIOLATIONS**

1. Roads has violated RSA 485-A:17 by significantly altering terrain without the required permits from DES. Roads has violated RSA 485-A:17 and Env Ws 415.09(i) by failing to install erosion control measures on Sites #1, #2, and #3.

2. Roads has violated RSA 485-A:17 and Env Ws 415.09(j) by failing to stabilize areas within Sites 1, 2, and 3.

3. Roads and NHDOT have violated RSA 482-A:3, I by placing fill in wetlands and surface waters of the State within Sites 1, 2 and 3 without a permit from DES.

#### **E. ORDER**

Based on the above findings, DES hereby orders Roads Construction, Inc. and the New Hampshire Department of Transportation as follows:

- 1. **Immediately cease and desist** all activities on Sites #1, #2, and #3, except for measures necessary to stabilize the sites.
- 2. Immediately stabilize all sites under the control of Roads Construction, Inc..
- 3. Within 5 days of this Order, prepare an erosion and sediment control plan ("Plan") for Sites #1, #2, and #3, and submit said Plan to DES for review. The Plan shall include a schedule for implementing the measures described in the Plan.
- 4. Implement the Plan at Sites #1, #2, and #3, as approved by DES, in accordance with the approved schedule.
- 5. Within 10 days of this Order, submit an application for a site specific permit to DES for Site #2. The application shall be prepared by an engineer licensed in the State of New Hampshire, and in accordance with Env-Ws 415.05.
- 6. Within 20 days of receipt of this Order, submit a restoration plan to DES for review and

approval. The restoration plan shall be prepared by a certified wetland scientist, and include provisions for restoration or mitigation of the wetland and surface waters impacted by activities at Sites #1, #2, and #3. The following shall be submitted with the restoration plan:

- a. A plan with dimensions, drawn to scale, showing:
  - i. existing conditions on the sites, with wetland boundaries and land topography; and
  - ii. proposed conditions after reestablishing the jurisdictional areas;
- b A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) and stabilization of the restoration area;

A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration and mitigation areas;

- d A description of the proposed construction sequence, equipment. methods for accomplishing restoration and anticipated restoration compliance date.
- e A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum monitoring progress reports for two successive growing seasons following completion of the restoration project.

7. Retain a qualified wetland scientist to supervise the implementation of the restoration plan prepared in accordance with item #6 above and to submit the restoration progress reports.

8. Implement the restoration plan proposed in accordance with item #6 above only after receiving written approval and as conditioned by DES.

Submit the completed Site Specific and wetlands applications, wetlands restoration/mitigation plan, and erosion and sediment control plans to:

Rene J. Pelletier, Manager  
DES Water Division, Land Resources Management Program  
6 Hazen Drive - P.O. Box 95  
Concord, NH 03302-0095

## **F. APPEAL**

Any person aggrieved by determinations D.1 or D.2 of this Order may appeal the Order to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.


Any person aggrieved by determination D.3 of this Order may apply for reconsideration with respect to any matter determined in this action within 20 days from the date of the Order. A motion for rehearing must describe in detail each ground for the request. DES may grant a rehearing if in its opinion, good reason is provided in the motion.

Filing an appeal or motion for reconsideration of the Order will not automatically relieve you of your obligation to comply with the Order.

#### G. OTHER PROVISIONS

Please note that RSA 485-A:22 and RSA 482-A:13 and 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Roads Construction, Inc. and NHDOT remain obligated to comply with all applicable requirements, in particular installation of sufficient sediment and erosion controls to prohibit sediment from leaving the Project. DES will continue to monitor Roads' and NHDOT's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Hillsborough County Registry of Deeds so as to run with the land.

  
**COPY**  
Harry T. Stewart, P.E., Director  
Water Division

  
**COPY**  
Robert W. Varney, Commissioner

cc: Gretchen Rule, DES Enforcement Coordinator

Charles Knox, DES PIP Office  
Hillsborough County Registry of Deeds  
Steven E. Holdner & Julia M. Wayland  
Vincent N. DeLuca & Peter Gentile  
Ana Ford, WQE/WD/DES  
Lori Sommer, WET/WD/DES  
Jeff Albright, NH DOT  
Bill Ingham, NH Fish & Game  
Hillsborough Planning Board  
Hillsborough Conservation Commission